

Managing NASA's Cultural Resources



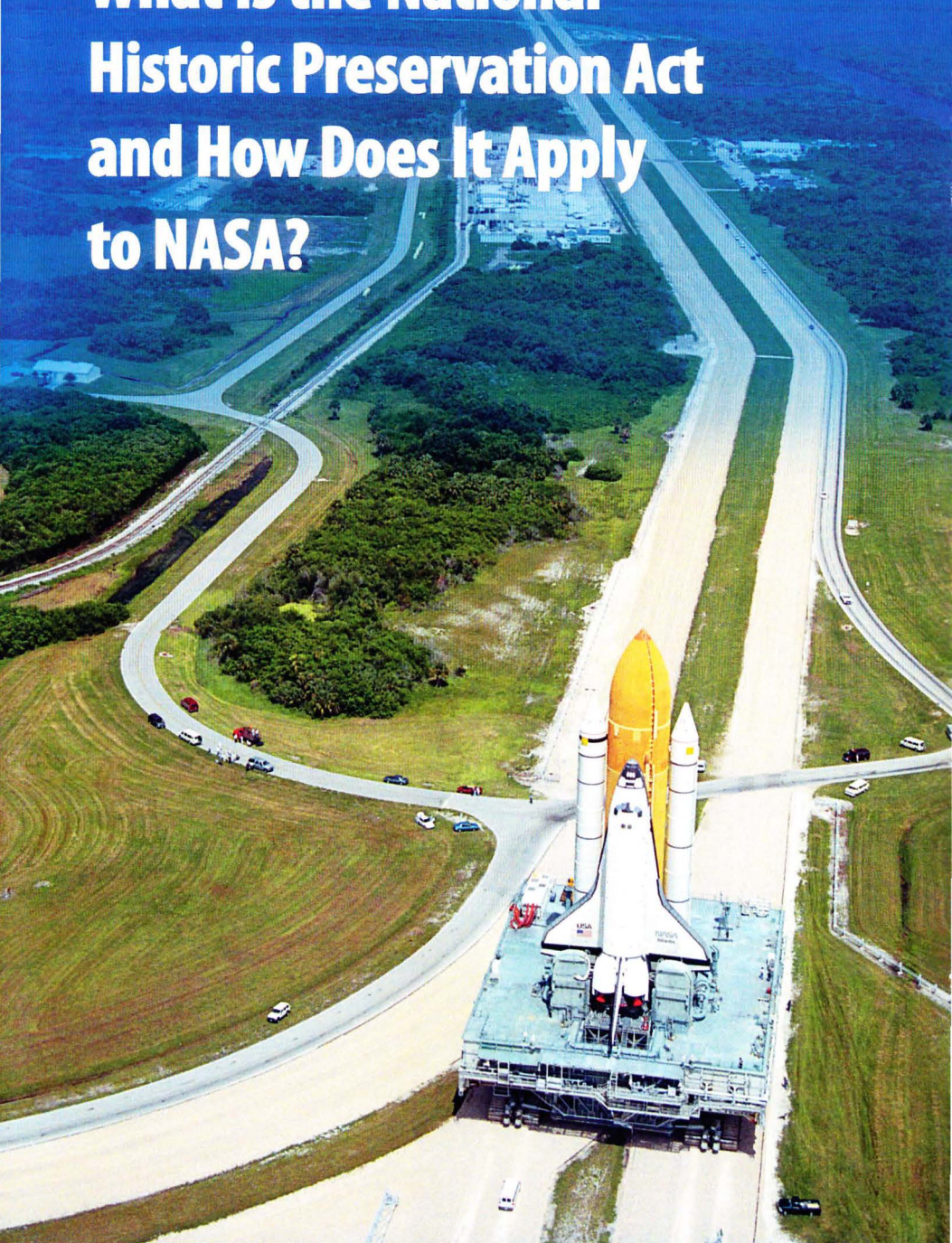
A POCKET GUIDE

SECTION 106

A photograph of the Space Shuttle Columbia being mated to the External Tank and Solid Rocket Boosters inside the Vehicle Assembly Building. The shuttle is suspended by a large crane and is surrounded by a complex network of steel beams and scaffolding. The scene is illuminated by bright overhead lights, creating a high-contrast, industrial atmosphere.

What you need to know

What Is the National Historic Preservation Act and How Does It Apply to NASA?



The National Historic Preservation Act (NHPA)

Congress Takes Action

Signed into law in 1966, the NHPA was enacted to “establish a Program for the Preservation of Additional Historic Properties throughout the Nation.” It was based on the premise that “the preservation of this irreplaceable heritage is in the public interest.”

NHPA Basics

The primary historic preservation law in effect today, NHPA established the National Register of Historic Places (NRHP), the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP). The NHPA directs Federal agencies to establish historic preservation programs for the management and preservation of historic properties (Section 110).

Executive Order 13287, “Preserve America”

In 2003, President George W. Bush issued Executive Order 13287, “Preserve America” (EO 13287), to reinforce the role of the Federal government in “advancing the protection, enhancement, and contemporary use” of historic properties under its control. EO 13287 emphasizes Federal stewardship as stipulated in Section 110 of the NHPA, and encourages public-private partnerships and heritage tourism as viable opportunities for the reuse of historic properties. Additionally, EO 13287 added a regular reporting requirement to ensure Federal agency planning and accountability. Functioning as a historic preservation “report card” for Federal agencies, EO 13287 reports are submitted to the ACHP and the Secretary of the Interior every 3 years. The next report is due in 2011.

Section 106 At a Glance

- **What is Section 106?** Section 106 of the NHPA requires Federal agencies to consider the effects of their undertakings on “historic properties” and seek ways to avoid, minimize, or mitigate those effects.
- **Does Section 106 Apply to NASA?** Yes. All Federal agencies are required to comply with Section 106.
- **Does the National Environmental Policy Act (NEPA) satisfy Section 106?** No. Section 106 has its own independent requirements.
- **What constitutes a historic property?** A historic property is any district, site, building, structure, or object that is listed in or eligible for listing in the NRHP.
- **How do I know if a resource is historic?** Contact your Center Historic Preservation Officer (HPO). Resources must be formally identified by qualified cultural resources professionals.
- **When does Section 106 occur?** Anytime a Federal undertaking (i.e., planned program or project) has the potential to affect historic properties, and before the undertaking occurs.
- **What if Section 106 does not occur?** The agency is in “foreclosure,” which can result in legal challenges, damage to NASA’s public image, and strained relationships with historic preservation regulators and stakeholders.
- **What is my role in Section 106?** Notify the Center HPO before initiating any ground disturbing activities or demolition/destruction, alteration/modification, or excessing of buildings, structures and large items of personal property. Do not discard documentation, such as photographic records, without consulting the HPO. When in doubt, seek guidance and do not proceed!
- **What is the role of the ACHP?** The ACHP administers the Section 106 review process and works with Federal agencies to promote agency consideration of historic preservation in their programs.

Before You Launch Into the Section 106 Review Process, Know Your Responsibilities and Plan Ahead.



Section 106 and the Consideration of Historic Properties

Agency Consideration

The NHPA also established the Section 106 review process, which stipulates that:

the "head of any Federal agency having direct or indirect jurisdiction over a

proposed Federal or federally assisted undertaking... shall, prior to the approval of the expenditure of any Federal funds... take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register... and afford the Advisory Council on Historic Preservation... a reasonable opportunity to comment."

This stipulation is legally binding for all Federal agencies and is reinforced in the United States Code of Federal Regulations (CFR), Title 36, Part 800, "Protection of Historic Properties."

Historic Properties

A historic property is defined in the NHPA as any district, site, building, structure, or object that is listed in or eligible for listing in the NRHP. It is important to note that, for the purposes of Section 106, it is irrelevant whether a resource has been formally nominated for listing in the NRHP, as the trigger for consideration is eligibility. Only qualified cultural resources professionals may evaluate resources for NRHP eligibility. These qualifications are detailed in the Secretary of the Interior's Professional Qualification Standards, codified in 36 CFR Part 61.

Section 106 and NEPA

Integrating Section 106 and NEPA

The National Environmental Policy Act of 1969 (Public Law 91-190; 42 U.S.C. 4321-4347) requires Federal agencies to evaluate the impact of their actions on the environment and to consider alternatives. NEPA applies to a broad range of resource types within the human and natural environment, including cultural



resources. Federal agencies often choose to integrate NEPA and NHPA Section 106 compliance. However, it is important to note that NEPA and NHPA are two independent laws with separate and distinct implementing regulations. While NEPA does address the impacts of actions on cultural resources, the preparation of NEPA documentation, such as an Environmental Assessment, does not necessarily fulfill the requirements of Section 106. Federal agencies must fully satisfy the requirements of Section 106 as well as NEPA before moving forward with a project.

Consultation With Stakeholders

The Section 106 review process cannot be carried out unilaterally by an agency. Rather, it is collaborative and must be carried out in consultation with the SHPO, Indian tribes, Native Hawaiian organizations, and other public stakeholders, as appropriate. The ACHP may choose to participate in cases where there will be an adverse effect to historic properties. These “consulting parties” should be engaged and their input considered throughout the Section 106 process.

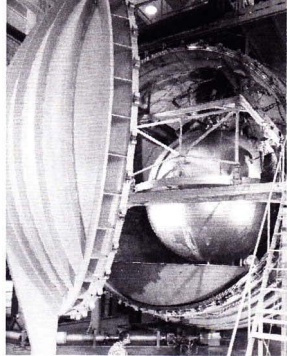
Section 106 Review: 4-Step Process

Step 1: Initiate Section 106 Review Process The Section 106 Review process begins once the Federal agency has determined that there is an undertaking, defined as “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency,” or on behalf of the agency.

Step 2: Identify Historic Properties The Federal agency must determine the Area of Potential Effects (APE), defined as the area within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. The agency must then identify whether or not historic properties are present within the APE. Because only qualified cultural resources professionals may evaluate historic properties, NASA frequently employs contractors to conduct this identification.

Step 3: Assess Adverse Effects If historic properties are present within the APE, the agency must then determine whether or not these properties will be adversely affected by the undertaking. Examples of adverse effects may include: demolition or partial destruction; alteration, including repair or rehabilitation; change in use, location, or setting; and abandonment or neglect. Adverse effects may also result from the transfer, lease, or sale of a historic property out of Federal ownership.

Step 4: Resolve Adverse Effects The agency must resolve adverse effects to historic properties in consultation with the consulting parties. As part of this process, the Federal agency must consider ways to avoid or minimize the adverse effect(s) of the undertaking. If none are found, adverse effects may be resolved through the execution of a Memorandum of Agreement (MOA) with the consulting parties. An MOA is a legally binding document that stipulates measures required to mitigate the adverse effects. Adverse effects must be resolved—i.e., the MOA must be signed—before the undertaking can proceed.



Agreement Documents (MOAs and PAs)

A Memorandum of Agreement (MOA) is a legally binding document that stipulates measures that will be taken to mitigate adverse effects. MOAs are signed by the Federal agency initiating the undertaking, the SHPO, and any consulting parties with an essential role in carrying out the stipulations, such as a private company that is taking over the management of a historic property. Adverse effects must be resolved—i.e., the MOA must be signed—before the undertaking can proceed.

In cases where an agency will carry out a series of related or regular undertakings, such as an agency-wide program termination or change in mission, a Programmatic Agreement (PA) may be prepared in place of or in addition to an

MOA. PAs are intended to streamline the Section 106 process in cases where standard case-by-case review would be arduous or inefficient. PAs may also be used to define the Section 106 process for the regular management of NASA Centers or historic districts. When used in this manner, PAs should address all types of historic properties, should reduce timeframes for consultation, and should include allowances for certain categories of undertakings that are not likely to affect historic properties.

Section 106 stipulates that Federal agencies seek ways to avoid, minimize, and mitigate adverse effects to historic properties in consultation with the SHPO and consulting parties. Because Section 106 is a

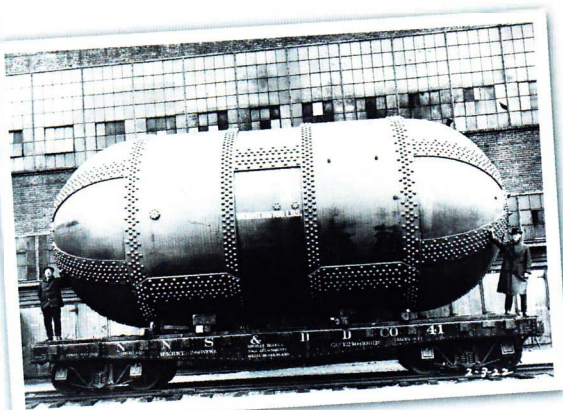
collaborative process, the results of the consultation are not predetermined. Ways to avoid and minimize adverse effects must be considered by a Federal agency in good faith before making a determination that mitigation is necessary.

If an agency determines that adverse effects cannot be avoided or minimized, then mitigation is necessary. Mitigation (or “treatment”) measures are intended to compensate the public for the adverse effect, and as such, should

be commensurate with the scale of the undertaking and the magnitude of the loss. While recordation or documentation of historic properties is the most commonly used measure, mitigation may be any single action or set of procedures that is agreeable to the Federal agency and the consulting parties. Public benefit and public access to information produced through mitigation is an essential consideration.



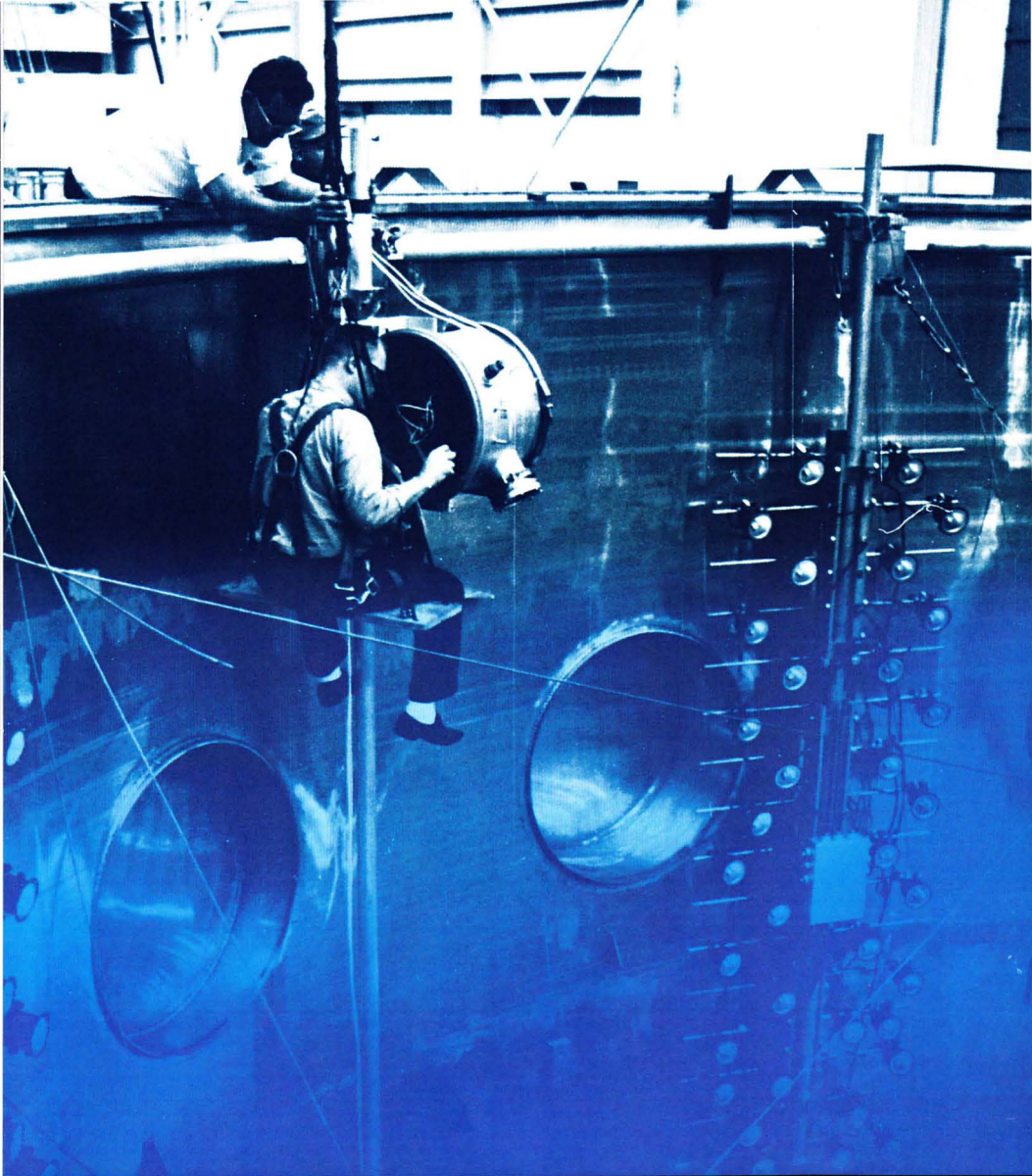
**Avoid,
Minimize,
Mitigate**



The nature of NASA's scientific mission and the need to constantly alter and update its resources means that NASA often cannot avoid adverse effects to historic properties. The most common mitigation employed by NASA is recordation of the historic property through photographs, drawings, and/or written documentation. However, the agency and the consulting parties may agree on alternate measures, such as public interpretation through Web sites or printed material.

Section 106 Foreclosure

When a Federal agency official fails to complete the Section 106 process for an undertaking that results in an adverse effect to a historic property, that official has violated Federal law. The failure of an agency to allow the ACHP to comment is referred to as "foreclosure." Foreclosure, or failure to properly execute Section 106, can result in legal action against the agency brought by public stakeholders. Foreclosure can compromise NASA's public image, and can result in long-term damage to the agency's relationships with ACHP, SHPO, and other public partners.



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